Human Rights

THE HUMAN RIGHT TO ADEQUATE HOUSING

Fact Sheet No. 21

World Campaign for Human Rights

Introduction: the International Bill of Rights

At the core of United Nations action to protect and promote human rights and fundamental freedoms is the International Bill of Rights. The Bill consists of three instruments:

The Universal Declaration of Human Rights (1948);

The International Covenant on Economic, Social and Cultural Rights (1966);

The International Covenant on Civil and Political Rights (1966).

These three documents define and establish human rights and fundamental freedoms. They form the foundation for the more than 50 additional United Nations human rights conventions, declarations, sets of rules and principles.

The Covenants are international legal instruments. This means that members of the United Nations, when they become parties to a Covenant or other conventions by ratifying or acceding to them, accept major obligations grounded in law.

States parties voluntarily bind themselves to bring national legislation, policy and practice into line with their existing international legal obligations.

By ratifying these and other binding texts, States become accountable to their citizens, other States parties to the same instrument and to the international community at large by solemnly committing themselves to respect and ensure the rights and freedoms found in these documents. Many of the major international human rights treaties also require States parties to report regularly on the steps they have taken to guarantee the realization of these rights, as well as on the progress they have made towards this end.

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This Fact Sheet addresses the foundations, implications and content of one particular right found in many international legal texts, including the Covenant on Economic, Social and Cultural Rights and the Universal Declaration: the human right to adequate housing. A series of important developments concerning this right have taken place during the past several years within various United Nations human rights bodies. These and other issues will be outlined below.

Achieving economic, social and cultural rights

Despite the fact that there are two Covenants, each guaranteeing a separate set of human rights, the interdependence and indivisibility of all rights are a long-accepted and consistently reaffirmed principle. In reality, this means that respect for civil and political rights cannot be separated from the enjoyment of economic, social and cultural rights and, on the other hand, that genuine economic and social development requires the political and civil freedoms to participate in this process. It is these underlying principles, of interdependence and indivisibility, which guide the vision of human rights and fundamental freedoms advocated by the United Nations.

Nevertheless, the mutually reinforcing nature of human rights—implying that all human rights should be treated equally under law and in fact—has proven difficult to translate into practice. While the implementation of all human rights is problematic, the difficulties encountered in realizing economic, social and cultural rights have proved particularly intractable. In response to these challenges and in recognition of the direct link between human rights and development, the United Nations is paying an increasing degree of attention to economic, social and cultural rights and to ways in which the international community can work together to ensure their realization.

A number of specific steps towards the effective implementation of economic, social and cultural rights have been taken by various United Nations human rights bodies in recent years. These include the establishment in 1987 of the Committee on Economic, Social and Cultural Rights (see Fact Sheet No. 16); the appointment by the Sub-

Commission on Prevention of Discrimination and Protection of Minorities of Special Rapporteurs on issues such as the right to food, the realization of economic, social and cultural rights, extreme poverty and promoting the realization of the right to adequate housing.

Human rights permeate all areas of United Nations activity and several of the specialized agencies, such as the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), have maintained human rights portfolios for decades. An increasing number of additional United Nations agencies have begun incorporating human rights concerns into their respective programmes of work. This is particularly true of the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP) and the World Health Organization (WHO).

Each of the above-mentioned developments have facilitated and strengthened United Nations attention to these rights. The right to adequate housing is one of the economic, social and cultural rights to have gained increasing attention and promotion, not only from the human rights bodies but also from the United Nations Centre for Human Settlements (Habitat). This began with the implementation of the Vancouver Declaration on Human Settlements issued in 1976, followed by the proclamation of the International Year of Shelter for the Homeless (1987) and the adoption of the Global Strategy for Shelter to the Year 2000, by the United Nations General Assembly in 1988.

What does housing have to do with human rights?

At first glance, it might seem unusual that a subject such as housing would constitute an issue of human rights. However, a closer look at international and national laws, as well as at the significance of a secure place to live for human dignity, physical and mental health and overall quality of life, begins to reveal some of the human rights implications of housing. Adequate housing is universally viewed as one of the most basic human needs.

Yet as important as adequate housing is to everyone, the United Nations Centre for Human Settlements estimates that throughout the

world over 1 billion people live in inadequate housing, with in excess of 100 million people living in conditions classified as homelessness.

Access to drinking water and adequate sanitation facilities are additional basic needs directly associated with housing. According to figures released by the World Health Organization, 1.2 billion people in developing countries do not have access to drinking water and 1.8 billion people live without access to adequate sanitation (*WHO Decade Assessment Report, 1990*). These figures serve to illustrate the enormous scale of the global struggle to fulfil the right to adequate housing.

The International Year of Shelter for the Homeless in 1987 facilitated the raising of public awareness about the housing and related problems still prevalent throughout the world. The follow-up to the Year, the Global Strategy for Shelter to the Year 2000 has propelled housing issues forward, and has resulted in housing rights being placed more prominently than ever before on the human rights agenda of the United Nations.

The right to adequate housing forms a cornerstone of the Global Shelter Strategy:

> The right to adequate housing is universally recognized by the community of nations . . . All nations without exception, have some form of obligation in the shelter sector, as exemplified by their creation of housing ministries or housing agencies, by their allocation of funds to the housing sector, and by their policies, programmes and projects . . . All citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them.

Adequate housing is defined within the Global Strategy as meaning: adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities—all at a reasonable cost.

How, then, has international human rights law sought to translate this vision of adequate housing into practical legal formulations?

The legal status of housing rights

With the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing joined the body of international,

universally applicable and universally accepted human rights law. Since that time this right has been reaffirmed in a wide range of additional human rights instruments, each of which are relevant to distinct groups within society. No less than 12 different texts adopted and proclaimed by the United Nations explicitly recognize the right to adequate housing (Annex I).

The housing rights of everyone

Many of the instruments that recognize the right to adequate housing phrase this right as one to which everybody is entitled. This is important, because although other texts mention entitlement to adequate housing in the context of certain groups (thus providing such groups added legal protection), ultimately, adequate housing is the right of every child, woman and man—everywhere. Article 25.1 of the Universal Declaration of Human Rights thus proclaims that:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The International Covenant on Economic, Social and Cultural Rights has been ratified or acceded to by 108 States. This text contains perhaps the most significant foundation of the right to housing found in the entire body of legal principles which comprise international human rights law. Article 11.1 of the Covenant declares that:

> The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

In addition to these two sources, both the United Nations Declaration on Social Progress and Development (1969) and the United Nations Vancouver Declaration on Human Settlements (1976) recognize the rights of everyone to adequate housing.

Housing rights and non-discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination is presently the most widely ratified of all United Nations human rights texts. Article 5 (*e*) of this Convention includes the obligation of States parties to:

> prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic, social and cultural rights in particular . . . the right to housing.

The housing rights of women

Equality of treatment is also the basis upon which all women are accorded, among other rights, the right to housing. Under article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women (1979), States parties are specifically required to eliminate discrimination against women in rural areas and to ensure to such women the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply.

The housing rights of children

Both the United Nations Declaration of the Rights of the Child (1959) and the Convention on the Rights of the Child (1989) address the special housing rights of children. Article 27 of the Convention requires States parties to take appropriate measures to assist parents and others responsible for the child to implement the right to an adequate standard of living, and:

> in case of need [to] provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

The housing rights of migrant workers

The rights of migrant workers to equality of treatment with respect to housing is guaranteed in article 43 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990). This article provides that:

> Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to . . . (*d*) access to housing, including social housing schemes, and protection against exploitation in respect of rents.

The housing rights of workers

The most lengthy international legal text concerning housing is the 1961 International Labour Organisation (ILO) Recommendation No. 115 on Worker's Housing. It contains a number of clauses that recognize the central importance of housing, and which augment other legal foundations of housing rights. After noting in its preamble that the Constitution of ILO recognizes the solemn obligation of the organization to further programmes which will achieve the provision of adequate housing, Recommendation No. 115 states that:

> it should be an objective of national housing policy to . . . [ensure] that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.

In total, some 37 ILO conventions and recommendations mention in one respect or another, the subject of housing.

The housing rights of refugees

Under the 1951 Convention relating to the Status of Refugees, the Contracting States are required to accord refugees treatment as favourable as possible, and not less favourable than that accorded to aliens generally in the same circumstances with regard to housing.

The housing rights of indigenous peoples

The United Nations draft declaration on the rights of indigenous peoples, though not yet adopted, mentions housing rights twice: indigenous peoples shall have a right to determine, plan and implement all housing and other social and economic programmes affecting them; similarly, indigenous peoples shall also have the right to autonomy in matters relating to their own internal and local affairs, including housing.

In addition to being included in the various treaties and declarations just noted, the right to adequate housing has also been addressed in many resolutions adopted by all types of United Nations decision-making organs. While such resolutions are not legally binding, they serve the important function of articulating internationally accepted standards. This method of recognition reveals the sustained global attention and support given to the right to adequate housing, at least in principle, by the international community. Most of the resolutions concerning housing rights have been directed at Governments, with a view to encouraging them to do more to realize this right.

For example, in resolution 42/146, the General Assembly reiterated

> the need to take, at the national and international levels, measures to promote the right of all persons to an adequate standard of living for themselves and their families, including adequate housing, and calls upon all States and international organizations concerned to pay special attention to the realization of the right to adequate housing in carrying out measures to develop national shelter strategies and settlement improvement programmes.

These sentiments have been restated in a number of additional resolutions adopted by the Economic and Social Council, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Most recently, in its resolution 1991/26, the Sub-Commission urged

> all States to pursue effective policies and adopt legislation aimed at ensuring the realization of the right to adequate housing of the entire population, concentrating on those currently homeless or inadequately housed.

Housing and other rights: an often unrecognized link

The indivisibility and interdependence of all human rights finds clear expression through the right to housing. As recognized by several human rights bodies of the United Nations, the full enjoyment of such rights as the right to human dignity, the principle of non-discrimination, the right to an adequate standard of living, the right to freedom to choose one's residence, the right to freedom of association and expression (such as for tenants and other community-based groups), the right to security of person (in the case of forced or arbitrary evictions or other forms of harassment) and the right not to be subjected to arbitrary interference with one's privacy, family, home or correspondence is indispensable for the right to adequate housing to be realized, possessed and maintained by all groups in society.

At the same time, having access to adequate, safe and secure housing substantially strengthens the likelihood of people being able to enjoy certain additional rights. Housing is a foundation from which other legal entitlements can be achieved. For example: the adequacy of one's housing and living conditions are closely linked to the degree to which the right to environmental hygiene and the right to the highest attainable level of mental and physical health can be enjoyed. The World Health Organization has asserted that housing is the single most important environmental factor associated with disease conditions and higher mortality and morbidity rates.

This relationship or "permeability" between certain human rights and the right to adequate housing show clearly how central are the notions of indivisibility and interdependence to the full enjoyment of *all* rights.

Clarifying governmental obligations

The widespread legal recognition of the right to adequate housing is of the utmost importance. In practical terms, however, it is necessary

to spell out the specific steps which Governments should take to turn these legal rights into concrete realities for the people who are entitled to them. It is sometimes mistakenly thought that rights such as the right to housing simply require Governments to provide sufficient public funds towards this end and that the subsequent allocation of monetary resources is all that is needed for obligations surrounding this right to be satisfied. However, the right to housing and, indeed, all economic, social and cultural rights confer a much more lengthy and complex series of obligations on States.

The Committee on Economic, Social and Cultural Rights has helped to clarify the various governmental obligations arising from recognition of the right to adequate housing. It has done this through a number of initiatives. These include: (*a*) holding a "general discussion" on this right; (*b*) comprehensively revising the guidelines for States' reports under articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights (Annex II); (*c*) adopting its General Comment No. 4 on the Right to Adequate Housing (Annex III); and (*d*) including in its concluding observations on some States parties' reports remarks to the effect that the State in question was infringing the right to adequate housing owing to the practice of forced eviction.

These steps, and of course the norms of the Covenant and other legal sources of the right to housing outlined above, give rise to various levels of governmental obligations towards the realization of this right.

The legal obligations of Governments concerning the right to housing consist of (i) the duties found in article 2.1 of the Covenant; and (ii) the more specific obligations to recognize, respect, protect and fulfil this and other rights.

Article 2.1 of the Covenant is of central importance for determining what Governments must do and what they should refrain from doing in the process leading to the society-wide enjoyment of the rights found in the Covenant. This article reads as follows:

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Three phrases in this article are particularly important for understanding the obligations of Governments to realize fully the rights

recognized in the Covenant, including the right to adequate housing: (*a*) "undertakes to take steps . . . by all appropriate means"; (*b*) "to the maximum of its available resources"; and (*c*) "to achieve progressively".

(*a*) "undertakes to take steps . . . by all appropriate means"

This obligation is immediate. Steps must be undertaken by States directly upon ratification of the Covenant. One of the first of these appropriate steps should be for the State party to undertake a comprehensive review of all relevant legislation with a view to making national laws fully compatible with international legal obligations.

The Committee on Economic, Social and Cultural Rights has recognized that in many instances legislation is highly desirable, and in some cases, indispensable, for the fulfilment of each of the rights found in the Covenant. At the same time, however, the Committee has emphasized that the adoption of legislative measures alone, or the existence of legislative compatibility is not enough for a State party to fulfil its obligations under the Covenant.

The term "by all appropriate means" has been broadly interpreted. In addition to legislative measures, administrative, judicial, economic, social and educational steps must also be taken.

In general terms, Governments must also take steps which are deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant. Consequently, rapid steps are required to diagnose the existing situation of the rights found in the Covenant.

States parties are also obliged to develop policies and set priorities consistent with the Covenant, based upon the prevailing status of the rights in question. They are also required to evaluate the progress of such measures and to provide effective legal or other remedies for violations.

With specific reference to the right to adequate housing, States parties are required to adopt a national housing strategy. This strategy should define the objectives for the development of shelter conditions,

identify the resources available to meet these goals, as well as the most cost-effective way of using them, and set out the responsibilities and time-frame for the implementation of the necessary measures.

Such strategies should reflect extensive genuine consultation with, and participation by, all social sectors, including the homeless and the inadequately housed and their representatives and organizations.

Additional steps are required to ensure effective coordination between relevant national ministries and regional and local authorities in order to reconcile related policies (economic, agriculture, environment, energy and so forth) with the obligations arising from article 11 of the Covenant.

(*b*) "to the maximum of its available resources"

This means that both the resources within a State and those provided by other States or the international community must be utilized for the fulfilment of each of the rights found in the Covenant. Even when "available resources" are demonstrably inadequate, States parties must still strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.

Importantly, this principle requires an equitable and effective use of and access to the resources available. Although the alleged lack of resources is often used to justify non-fulfilment of certain rights, the Committee on Economic, Social and Cultural Rights has emphasized that even in times of severe economic contraction and the undertaking of measures of structural adjustment within a State, vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.

If a State claims that it is unable to meet even its minimum obligations because of a lack of resources, it must at least be able to demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations. However, lack of resources can never be used to justify failure of a State to fulfil its obligation to monitor non-enjoyment of the rights found in the Covenant.

In essence, the obligation of States is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right to adequate housing for every individual in the shortest possible time using the maximum available resources.

(*c*) "to achieve progressively"

This imposes an obligation on States to move as quickly and effectively as possible towards the goal of realizing fully each of the rights found in the Covenant. Put simply, States cannot indefinitely postpone efforts to ensure their full realization. However, not all rights under this text are subject to progressive implementation. Both the adoption of legislation relating to the non-discrimination clauses of the Covenant and monitoring of the status of realization of the rights in question must occur *immediately* following ratification.

This obligation "to achieve progressively" must be read in the light of article 11.1 of the Covenant, in particular the reference to the right to the "continuous improvement of living conditions". Any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

The obligation of progressive realization, moreover, exists independently of any increase in resources. Above all, it requires effective use of resources available.

"A minimum core obligation"

Under the Covenant on Economic, Social and Cultural Rights, each State party, notwithstanding its level of economic development, is under a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights found in this instrument. Under the same Covenants, a State party in which any significant number of individuals is deprived of basic shelter and housing is, prima facie, failing to perform its obligations under the Covenant. Beyond this core requirement are four levels of additional governmental obligations relating to the right to adequate housing.

"To Recognize"

The obligation of States to recognize the right to housing manifests itself in several key areas. First, all countries must recognize the human rights dimensions of housing and ensure that no measures of any kind are taken with the intention of eroding the legal status of this right.

Second, legislative measures, coupled with appropriate policies geared towards the progressive realization of housing rights, form part of the obligation "to recognize". Any existing legislation or policy which clearly detracts from the legal entitlement to adequate housing would require repeal or amendment. Policies and legislation should not be designed to benefit already advantaged social groups at the expense of those in greater need.

Another dimension of the duty to recognize this right can be expressed in terms of policy. Specifically, housing rights issues should be incorporated into the overall development objectives of States. In addition, a national strategy aimed at progressively realizing the right to housing for all through the establishment of specific targets should be adopted.

Third, the recognition of the right to housing means that measures must be undertaken by States to assess the degree to which this right is already enjoyed by the population at the time of ratification. Even more importantly, a genuine attempt must be made by States to determine the degree to which this right is not in place, and to target housing policies and laws towards attaining this right for everyone in the shortest possible time. In this respect, States must give due priority to those social groups living in unfavourable conditions by according them particular consideration.

"To Respect"

The duty to respect the right to adequate housing means that Governments should refrain from any action which prevents people from satisfying this right themselves when they are able to do so. Respecting this right will often only require abstention by the Government from certain practices and a commitment to facilitate the "self-

help" initiatives of affected groups. In this context, States should desist from restricting the full enjoyment of the right to popular participation by the beneficiaries of housing rights, and respect the fundamental right to organize and assemble.

In particular, the responsibility of respecting the right to adequate housing means that States must abstain from carrying out or otherwise advocating the forced or arbitrary eviction of persons and groups. States must respect people's rights to build their own dwellings and order their environments in a manner which most effectively suits their culture, skills, needs and wishes. Honouring the right to equality of treatment, the right to privacy of the home and other relevant rights also form part of the State's duty to respect housing rights.

"To Protect"

To protect effectively the housing rights of a population, Governments must ensure that any possible violations of these rights by "third parties" such as landlords or property developers are prevented. Where such infringements do occur, the relevant public authorities should act to prevent any further deprivations and guarantee to affected persons access to legal remedies of redress for any infringement caused.

In order to protect the rights of citizens from acts such as forced evictions, Governments should take immediate measures aimed at conferring legal security of tenure upon all persons and households in society who currently lack such protection. In addition, residents should be protected, by legislation and other effective measures, from discrimination, harassment, withdrawal of services or other threats.

Steps should be taken by States to ensure that housing-related costs for individuals, families and households are commensurate with income levels. A system of housing subsidies should be established for sectors of society unable to afford adequate housing, as well as for the protection of tenants against unreasonable or sporadic rent increases.

States should ensure the creation of judicial, quasi-judicial, administrative or political enforcement mechanisms capable of providing redress to alleged victims of any infringement of the right to adequate housing.

"To Fulfil"

In comparison with the duties to recognize, to respect and to protect, the obligation of a State to *fulfil* the right to adequate housing is both positive and interventionary. It is in this category, in particular, that issues of public expenditure, government regulation of the economy and land market, the provision of public services and related infrastructure, the redistribution of income and other positive obligations emerge.

The Committee on Economic, Social and Cultural Rights has asserted that identifiable governmental strategies aimed at securing the right of all persons to live in peace and dignity should be developed. Access to land as an entitlement should be included in such strategies. The Committee has stated further that many of the measures required to satisfy the right to housing will involve resource allocations and that, in some cases, public funds allocated to housing might most usefully be spent on direct construction of new housing.

Generally, on the issue of housing finance, States must establish forms and levels of expenditure which adequately reflect society's housing needs, and which are consistent with the obligations arising from the Covenant and other legal sources.

As proclaimed in the Limburg Principles on the Implementation of the Covenant on Economic, Social and Cultural Rights, and reiterated subsequently by the Committee, due priority shall be given, in the use of all available resources, to the realization of rights recognized in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements, as well as the provision of essential services.

Other initiatives

In his 1990 report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Special Rapporteur on the realization of economic, social and cultural rights initiated a process of

elaborating the content of housing rights within the framework of possible areas of future standard-setting by the United Nations.

In 1992, a working paper entitled "The right to adequate housing" prepared by the Special Rapporteur was considered by the Sub-Commission. A key element of this paper was the effort further to elucidate the obligations of States *vis-à-vis* this right. The study also explored the question of whether the United Nations should eventually adopt a specific convention on housing rights.

The obligations of the international community

The obligations of the international community (a term which encompasses all States and international agencies) towards the realization of the right to adequate housing are more extensive than is generally assumed.

For example, under Articles 55 and 56 of the Charter of the United Nations and in accordance with well-established principles of international law, international cooperation for the realization of economic, social and cultural rights is an obligation of *all* States. This responsibility is particularly incumbent upon those States which are in a position to assist others in this regard.

Similarly, the 1986 Declaration on the Right to Development emphasizes that in the absence of an active programme of international, technical and financial assistance and cooperation, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries.

In more specific terms, related to the right to adequate housing, the international community as a whole is legally obligated to ensure protection of this right through a number of measures, such as:

Refraining from coercive measures designed to force a State to abrogate or infringe its housing rights obligations;

Providing financial or other assistance to States affected by natural, ecological or other disasters, resulting in, *inter alia*, the destruction of homes and settlements;

Ensuring the provision of shelter and/or housing to displaced persons and international refugees fleeing persecution, civil strife, armed conflict, droughts, famine, etc.;

Responding to abject violations of housing rights carried out in any State; and

Diligently reaffirming the importance of the right to adequate housing, at regular intervals, and ensuring that newly adopted legal texts do not in any way detract from existing levels of recognition accorded to this right.

The entitlements of housing rights

One of the barriers to achieving housing rights has been the absence of a universally recognized definition of the set of entitlements comprising this norm. This hurdle was perhaps more the result of perception than genuine legal analysis. In recent times, a number of steps have been taken to refine legal approaches to this matter. Most notably, General Comment No. 4, of the Committee on Economic, Social and Cultural Rights, on the Right to Adequate Housing defines this right as being comprised of a variety of specific concerns. Viewed in their entirety, these entitlements form the core guarantees which, under international law, are legally vested in all persons.

1. Legal security of tenure

All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Governments should consequently take immediate measures aimed at conferring legal security of tenure upon those households currently lacking such protection. Such steps should be taken in genuine consultation with affected persons and groups.

2. Availability of services, materials and infrastructure

All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services.

3. Affordable housing

Personal or household costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Housing subsidies should be available for those unable to obtain affordable housing, and tenants should be protected from unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States to ensure the availability of such materials.

4. Habitable housing

Adequate housing must be habitable. In other words, it must provide the inhabitants with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. The physical safety of occupants must also be guaranteed.

5. Accessible housing

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and

other vulnerable groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups.

6. Location

Adequate housing must be in a location which allows access to employment options, health care services, schools, child care centres and other social facilities. Housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

7. Culturally adequate housing

The way housing is constructed, the building materials used and the policies underlying these must appropriately enable the expression of cultural identity and diversity. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed.

These extensive entitlements reveal some of the complexities associated with the right to adequate housing. They also show the many areas which must be fully considered by States with legal obligations to satisfy the housing rights of their population. Any person, family, household, group or community living in conditions in which these entitlements are not fully satisfied, could reasonably claim that they do not enjoy the right to adequate housing as enshrined in international human rights law.

Monitoring the right to adequate housing

The wide range of issues arising from the right to adequate housing requires the United Nations to undertake a variety of monitoring activities.

Monitoring by Habitat

Many of the more technical issues associated with this right are monitored by the United Nations Centre for Human Settlements (Habitat) in accordance with the Global Strategy for Shelter to the Year 2000.

Habitat has worked out a set of key indicators designed to capture the essential elements of shelter sector performance in all countries. These indicators emphasize the availability of basic services as an integral component of shelter adequacy. Other relevant factors include price, quantity, quality, supply and demand. Reports from Governments based on these indicators are to be prepared every two years for consideration by the Commission on Human Settlements.

Related monitoring of the implementation of the Global Strategy for Shelter to the Year 2000 is also coordinated by Habitat. This process is designed to indicate action taken and progress made, not just by States Members of the United Nations but also by agencies of the United Nations system as well as regional, bilateral and non-governmental organizations.

On 5 May 1993, the Commission on Human Settlements adopted a resolution on the human right to adequate housing (see excerpt reproduced in Annex I). The Resolution recommends, *inter alia*, that the Preparatory Committee for the planned 1996 United Nations Conference on Human Settlements (Habitat II), consider the question of the human right to adequate housing.

Monitoring by the United Nations human rights system

Under the Covenant on Economic, Social and Cultural Rights, States parties are required to submit reports once every five years, outlining, *inter alia*, the legislative and other measures they have taken to

realize for all people under their jurisdiction the right to adequate housing.

The Committee on Economic, Social and Cultural Rights issues guidelines to assist States parties in compiling their reports. These guidelines were completely revised in 1990. The guidelines on the right to adequate housing are contained in Annex II.

States parties to the Covenant are encouraged under the new guidelines to report on such developments and measures as: the number of homeless individuals and families; the number of people currently inadequately housed; the number of persons evicted during the previous five-year period; the number of people lacking legal protection against arbitrary or forced evictions; the existence of legislation affecting the realization of the right to adequate housing; measures taken to release unutilized land for the purposes of housing; and measures taken to ensure that international assistance for housing and human settlements is used to fulfil the needs of the most disadvantaged groups.

The Committee on Economic, Social and Cultural Rights examines these reports very carefully along with any other available information. It also engages in discussions with the representative of the State party presenting his or her country's report. Through this process, the Committee is in a position to monitor the degree to which the rights set forth in the Covenant have been realized by and in each State party.

With respect to the right to adequate housing, the Committee and other United Nations human rights bodies have recognized that comprehensively monitoring the extent to which this right is respected and enjoyed is a difficult task.

Part of the difficulty stems from the fact that very few States systematically collect housing statistics or indicators which are directly relevant to the concerns expressed in the Covenant.

However, the Committee in its General Comment No. 4, makes it clear that the obligation to monitor effectively the situation with respect to housing is a positive one. States parties are therefore required to take whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within their jurisdiction.

States parties must, in particular, provide detailed information to the Committee about those groups within society that are vulnerable and disadvantaged with regard to housing.

Reports from each of the States parties to the Covenant are public. Copies are available from the United Nations Centre for Human Rights in Geneva.

Towards the justiciability of housing rights

The question of whether the legal principle of justiciability or the provision of domestic legal remedies are applicable to economic, social and cultural rights, in particular the right to adequate housing, has been answered affirmatively by the Committee on Economic, Social and Cultural Rights. According to the Committee, areas where such provisions would apply, include:

(*a*) Legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions;

(*b*) Legal procedures seeking compensation following an illegal eviction;

(*c*) Complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance and racial or other forms of discrimination;

(*d*) Allegations of any form of discrimination in the allocation and availability of access to housing;

(*e*) Complaints against landlords concerning unhealthy or inadequate housing conditions; and

(*f*) Class action suits in situations involving significantly increased levels of homelessness.

Violations of housing rights

Various United Nations human rights bodies have confirmed that housing rights can be violated by Governments. In one of the first opinions on this issue, the Committee on Economic, Social and Cultural Rights noted at its fourth session (1990) that:

> The right to housing can be subject to violation. Acts and omissions constituting violations will need to be explored by the Committee, especially in the context of eviction[1].

Also at its fourth session, in its General Comment No. 2 which dealt with international technical assistance measures, the Committee asserted that the international financial institutions and development agencies

> should scrupulously avoid involvement in projects which . . . involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation . . . Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are taken duly into account.

Since that time, the Committee has strengthened its approach towards the compliance by State parties with housing rights obligations. On two separate occasions the Committee determined that tolerance by Governments of forced evictions on their territory constituted a violation of the norms of the Covenant. General Comment No. 4 on the Right to Adequate Housing provides further insight into the views of the Committee on this matter:

> The Committee considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

Similarly, in its resolution 1991/12 the Sub-Commission on Prevention of Discrimination and Protection of Minorities draws attention to

> the fact that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing, [and] the need for immediate measures to be undertaken at all levels aimed at eliminating the practice of forced eviction.

More recently, the Commission on Human Rights, in its resolution 1993/77 affirmed

that the practice of forced evictions constitutes a gross violation of human rights, in particular, the right to adequate housing.

To date, the United Nations has only considered violations of housing rights in the context of forced evictions either conducted or tolerated by the State. However, it is likely that in the near future, other actual and potential violations of the right to housing will also be considered. In 1991, the Committee on Economic, Social and Cultural Rights ventured an opinion that "a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations found in the Covenant".

Other acts and omissions which could provoke concern regarding possible infringements of the right to adequate housing include, but are not limited to: acts of racial or other forms of discrimination in the housing sphere; demolition or destruction of housing as a punitive measure; failing to take "appropriate steps" as described above; failing to reform or repeal legislation inconsistent with the Covenant; or not ensuring to any significant number of individuals a basic minimum level of shelter or housing.

Housing rights: is there a right to complain?

The Covenant on Economic, Social and Cultural Rights creates no formal mechanisms by which individuals could submit complaints alleging non-compliance by their Governments with their housing rights. Nevertheless, by working with non-governmental organizations which are active at the annual sessions of the Committee on Economic, Social and Cultural Rights, affected persons and groups can draw the attention of this body to practices and legislation of States parties that are believed to be inconsistent with the obligations of the Covenant.

A number of complaints may be expanded in the future. The Committee has been discussing the idea of incorporating an optional protocol similar to the Optional Protocol to the Covenant on Civil and

Political Rights. Among other things, such a protocol would allow citizens of States which had ratified the Covenant to submit complaints about alleged violations of the rights contained in that instrument directly to the Committee for consideration.

In addition, the complaint mechanisms under the International Convention on the Elimination of All Forms of Racial Discrimination (Fact Sheet Nos. 7, 12), the Optional Protocol to the Covenant on Civil and Political Rights (Fact Sheet Nos. 7, 15), the Convention on the Rights of the Child (revised Fact Sheet No. 10), the Economic and Social Council resolution 1503 procedure and the enforcement mechanisms of the International Labour Organisation could be utilized by persons alleging that they are the victims of certain types of housing rights violations.

Furthermore, specific issues and cases relating to the right to adequate housing can be raised by Member States, the specialized agencies and non-governmental organizations in a number of different United Nations forums: the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights (either directly or through its country-oriented Special Rapporteurs or Working Groups if appropriate), the Economic and Social Council and the General Assembly.

States themselves, of course, can always raise their concerns about the housing rights situation in another State if this situation should constitute infringements of existing legal obligations undertaken by the latter State. Some treaties include the right of States parties to initiate "inter-State complaints" against other States parties to the same human rights instrument.

Non-governmental organizations and housing rights

Non-governmental organizations are both local and international, important actors in efforts to promote and enforce the right to adequate housing.

At the local and national levels, non-governmental organizations can carry out a wide range of initiatives designed to promote the realization of the right to adequate housing. With specific regard to the Covenant on Economic, Social and Cultural Rights, they can publicize and distribute this instrument to vulnerable and disadvantaged groups in society. They can also seek to participate in the reporting process engaged in by governments.

Some non-governmental organizations have consultative status with the United Nations. This allows them certain rights of participation in the United Nations system. Individuals, local groups and other non-governmental organizations without consultative status can forward their concerns through them to the Committee on Economic, Social and Cultural Rights and other bodies dealing with housing rights issues.

In addition, any person or group, anywhere, can send information about violations by any State party of any of the rights found in the Covenant directly to the secretary of the Committee at the Centre for Human Rights. These communications are placed in the relevant country file for eventual distribution to Committee members.

Non-governmental organizations can provide legal education, training and advice to citizens in States which have ratified the Covenant or other relevant instruments, with a view to informing people of their rights and how to enforce them.

Campaigns for housing rights exist in more than a dozen countries, as well as at the international level. These campaigns seek to monitor the situation as well as to enforce the right to adequate housing through a variety of means including reliance on the international legal standards which have been set out in this Fact Sheet. A list of prominent organizations engaged in the struggle for universal recognition of the right to adequate housing can be found in Annex IV.

ANNEXES

ANNEX I

Legal sources of the right to adequate housing under international human rights law

INTERNATIONAL CONVENTIONS AND COVENANTS

International Covenant on Economic, Social and Cultural Rights (1966), adopted by United Nations General Assembly resolution 2200 A (XXI) on 16 December 1966, entered into force on 3 January 1976; 106 States Parties as of June 1992. State compliance with the Covenant is monitored by the Committee on Economic, Social and Cultural Rights. Article 11.1 states:

> "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and *housing, and to the continuous improvement of living conditions*. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

International Convention on the Elimination of All Forms of Racial Discrimination (1965), adopted by General Assembly resolution 2106 A (XX) on 21 December 1965, entered into force on 4 January 1969; 130 States Parties as of January 1992. State compliance with the Convention is monitored by the Committee on the Elimination of Racial Discrimination. Article 5 states:

> "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the

enjoyment of the following rights: . . . (*e*) Economic, Social and Cultural rights in particular: . . . (iii) The right to *housing*."

Convention on the Elimination of All Forms of Discrimination Against Women (1979), adopted by General Assembly resolution 34/180 of 18 December 1979, entered into force on 3 September 1981; 99 States Parties as of January 1992. State compliance with the Convention is monitored by the Committee on the Elimination of Discrimination Against Women. Article 14.2 states:

> "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: . . . (*h*) To enjoy adequate living conditions, particularly in relation to *housing*, sanitation, electricity and water supply, transport and communications."

Convention on the Rights of the Child (1989), adopted by General Assembly resolution 44/25 on 20 November 1989, entered into force on 2 September 1990; 69 States Parties as of January 1992. State compliance with this Convention is monitored by the Committee on the Rights of the Child. Article 27.3 states:

> "States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and *housing*."

Convention Relating to the Status of Refugees (1951), adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries of the Status of Refugees and Stateless Persons, entered into force on 22 April 1954. Article 21 states:

> "As regards *housing*, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), adopted by General Assembly resolution 45/158 on 16 December 1990; not yet in force. State compliance with this Convention will be monitored by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. Article 43.1 states:

> "Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: . . . (*d*) Access to *housing*, including social housing schemes, and protection against exploitation in respect of rents."

INTERNATIONAL DECLARATIONS AND RECOMMENDATIONS

The Universal Declaration of Human Rights (1948), adopted and proclaimed by United Nations General Assembly resolution 217 A (III) of 10 December 1948. Article 25.1 states:

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, *housing* and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

Declaration of the Rights of the Child (1959), proclaimed by General Assembly resolution 1386 (XIV) on 29 November 1959. Principle 4 states:

> "The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end special care and protection shall be provided to him and his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, *housing*, recreation and medical services."

International Labour Organisation (ILO) Recommendation No. 115 on Worker's Housing (1961), adopted at the forty-fourth session of the ILO Governing Body on 7 June 1961. Principle 2 states:

"It should be an objective of national [housing] policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent *housing* accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent."

Declaration on Social Progress and Development (1969), proclaimed by General Assembly resolution 2542 (XXIV) on 11 December 1969. Part II states:

"Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals:

"...

"*Article 10*

"...

"(*f*) The provision for all, particularly persons in low-income groups and large families, of adequate *housing* and community services."

Vancouver Declaration on Human Settlements (1976), adopted by the United Nations Conference on Human Settlements in 1976. Section III (8) and Chapter II (A.3) state, respectively:

"Adequate *shelter* and services are a basic human right which places an obligation on governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavour to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, *inter alia*, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities."

...

"The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes or land or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles and the Universal Declaration of Human Rights."

Declaration on the Right to Development (1986), adopted by General Assembly resolution 41/128 on 4 December 1986. Article 8.1 states:

"States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, *housing*, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices."

SELECTED UNITED NATIONS RESOLUTIONS

General Assembly resolution 41/146, entitled "The realization of the right to adequate housing", adopted on 4 December 1986, states in part:

"The General Assembly expresses its deep concern that millions of people do not enjoy the right to adequate housing."

General Assembly resolution 42/146, entitled "The realization of the right to adequate housing", adopted on 7 December 1987, states in part:

"The General Assembly reiterates the need to take, at the national and international levels, measures to promote the right of all persons to an adequate standard of living for themselves and their families, including adequate housing; and calls upon all States and international organizations concerned to pay special attention to the realization of the right to adequate housing in carrying out measures to develop national shelter strategies and set-

tlement improvement programmes within the framework of the Global Strategy for Shelter to the Year 2000."

Economic and Social Council resolution 1987/62, entitled "The realization of the right to adequate housing", adopted on 29 May 1987, states in part:

> "Recognizing that the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights provide that all persons have the right to an adequate standard of living for themselves and their families, including adequate housing, and that States should take appropriate steps to ensure the realization of that right."

Commission on Human Rights resolution 1986/36, entitled "The realization of the right to adequate housing", adopted on 12 March 1986, states in part:

> "The Commission on Human Rights reiterates the right of all persons to an adequate standard of living for themselves and their families, including adequate housing."

Commission on Human Rights resolution 1987/22, entitled "The realization of the right to adequate housing", adopted on 10 March 1987, states in part:

> "The Commission on Human Rights reiterates the need to take appropriate measures, at the national and international levels, for promoting the right of all persons to an adequate standard of living for themselves and their families, including adequate housing."

Commission on Human Rights resolution 1988/24, entitled "The realization of the right to adequate housing", adopted on 7 March 1988, states in part:

> "The Commission on Human Rights decides . . . to keep the question of the right to adequate housing under periodic review."

Commission on Human Rights resolution 1993/77, entitled "Forced evictions", adopted on 10 March 1993, states in part:

"The Commission on Human Rights . . . affirms that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing;

". . . urges governments to undertake immediate measures, at all levels, aimed at eliminating the practice of forced evictions . . . to confer legal security of tenure on all persons currently threatened with forced evictions;

". . . recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land . . . to persons or communities that have been forcibly evicted;

". . . requests the Secretary-General to compile an analytical report on the practice of forced evictions, based on an analysis of international law and jurisprudence and information submitted [by] Governments, relevant United Nations bodies . . . regional intergovernmental and non-governmental organizations and community-based organizations."

Commission on Human Settlements resolution 14/6, entitled "The human right to adequate housing", adopted on 5 May 1993, states in part:

"The Commission on Human Settlements urges all States to cease any practices which could or do result in the infringements of the human right to adequate housing, in particular the practice of forced, mass evictions and any form of racial or other discrimination in the housing sphere;

. . .

"Invites all States to repeal, reform or amend any existing legislation, policies, programmes or projects which in any manner negatively affect the realization of the right to adequate housing;

. . .

"Urges all States to comply with existing international agreements concerning the right to adequate housing, and to this end, to establish . . . appropriate monitoring mechanisms to provide, for national and international consideration, accurate data

and indicators on the extent of homelessness, inadequate housing conditions, persons without security of tenure, and other issues arising from the right to adequate housing and providing insights into policy, structural and other impediments to the efficient operation of the shelter sector."

Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/12, entitled "Forced evictions" adopted on 28 August 1991, states in part:

"*The Sub-Commission*,

"Recognizing that the practice of forced eviction involves the involuntary removal of persons, families and groups from their homes and communities, resulting in the destruction of the lives and identities of people throughout the world, as well as increasing homelessness,

. . .

"Draws the attention of the Commission on Human Rights to . . . (*b*) The fact that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing; (*c*) The need for immediate measures to be undertaken at all levels aimed at eliminating the practice of forced eviction;

. . .

"Emphasizes the importance of the provision of immediate, appropriate and sufficient compensation and/or alternative accommodation, consistent with the wishes and needs of persons and communities forcibly or arbitrarily evicted, following mutually satisfactory negotiations with the affected person(s) or group(s)."

Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/26, entitled "Promoting the realization of the right to adequate housing", adopted on 29 August 1991, states in part:

"The Sub-Commission urges all States to pursue effective policies and adopt legislation aimed at ensuring the realization of the right to adequate housing of the entire population, concentrating on those currently homeless or inadequately housed."

ANNEX II

Revised guidelines regarding the form and contents of States reports to be submitted by States parties under Articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights

THE RIGHT TO ADEQUATE HOUSING

(*a*) Please furnish detailed statistical information about the housing situation in your country.

(*b*) Please provide detailed information about those groups within your society that are vulnerable and disadvantaged with regard to housing. Indicate, in particular:

(i) The number of homeless individuals and families;

(ii) The number of individuals and families currently inadequately housed and without ready access to basic amenities such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country). Include the number of people living in overcrowded, damp, structurally unsafe housing or other conditions which affect health;

(iii) The number of persons currently classified as living in ''illegal'' settlements or housing;

(iv) The number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction;

(v) The number of persons whose housing expenses are above any government-set limit of affordability, based upon ability to pay or as a ratio of income;

(vi) The number of persons on waiting lists for obtaining accommodation, the average length of waiting time and measures taken to

decrease such lists, as well as to assist those on such lists in finding temporary housing;

(vii) The number of persons in different types of housing tenure by: social or public housing; private rental sector; owner-occupiers; "illegal" sector; and others.

(*c*) Please provide information on the existence of any laws affecting the realization of the right to housing, including:

(i) Legislation which gives substance to the right to housing in terms of defining the content of this right;

(ii) Legislation such as housing acts, homeless person acts, municipal corporation acts, etc.;

(iii) Legislation relevant to land use, land distribution, land allocation, land zoning, land ceilings, expropriations including provisions for compensation, land planning including procedures for community participation;

(iv) Legislation concerning the rights of tenants to security of tenure, to protection from eviction, to housing finance and rent control (or subsidy), housing affordability, etc.;

(v) Legislation concerning building codes, building regulations and standards and the provision of infrastructure;

(vi) Legislation prohibiting any and all forms of discrimination in the housing sector, including against groups not traditionally protected;

(vii) Legislation prohibiting any form of eviction;

(viii) Any legislative appeal or reform of existing laws which detracts from the fulfilment of the right to housing;

(ix) Legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfilment of housing rights for all sectors of society;

(x) Legislative measures conferring legal title to those living in the "illegal" sector;

(xi) Legislation concerning environmental planning and health in housing and human settlements.

(*d*) Please provide information on all other measures taken to fulfil the right to housing, including:

(i) Measures taken to encourage "enabling strategies" whereby local community-based organizations and the "informal sector" can build housing and related services. Are such organizations free to operate? Do they receive government funding?;

(ii) Measures taken by the State to build housing units and to increase other construction of affordable rental housing;

(iii) Measures taken to release unutilized, underutilized or misutilized land;

(iv) Financial measures taken by the State, including details of the budget of the Ministry of Housing or other relevant Ministry as a percentage of the national budget;

(v) Measures taken to ensure that international assistance for housing and human settlements is used to fulfil the needs of the most disadvantaged groups;

(vi) Measures taken to encourage the development of small and intermediate urban centres, especially at the rural level;

(vii) Measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics, World Fairs, conferences, etc.), "beautiful city" campaigns, etc., which guarantee protection from eviction or guarantee rehousing based on mutual agreement, by any persons living on or near to affected sites.

(*e*) During the reporting period, have there been any changes in the national policies, laws and practices negatively affecting the right to adequate housing? If so, please describe the changes and evaluate their impact.

ANNEX III

General Comment No. 4 on the Right to Adequate Housing
(adopted on 12 December 1991 by the Committee on Economic, Social and Cultural Rights)

1. Pursuant to article 11.1 of the Covenant, States parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". The right to adequate housing which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979 the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third and fourth sessions. In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987), including the Global Strategy for Shelter to the Year 2000 endorsed by the General Assembly. The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing, article 11.1 of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

4. Despite the fact the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11.1 of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some

developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. Worldwide, the United Nations estimates that there are over 100 million persons homeless and over 1 billion inadequately housed. There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

3. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitation upon the applicability of the right to individuals or to female-headed households, or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2.2 of the Covenant, not be subject to any form of discrimination.

7. In the Committee's view the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. Thus, "inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that

housing rights should be ensured to all persons irrespective of income or access to economic resources.

Secondly, the reference in article 11.1 must be read as referring not to housing *tout court* but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means . . . adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities all at a reasonable cost".

8. Thus, the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) *Legal security of tenure*

Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.

(b) *Availability of services, materials, facilities and infrastructure*

An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services.

(c) *Affordable*

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.

In accordance with the principle of affordability tenants should be protected from unreasonable rent levels or rent increases by appropriate means. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials.

(d) *Habitable*

Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the "Health Principles of Housing" prepared by the World Health Organization (WHO) which view housing as the environmental factor most frequently associated with disease conditions in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates.

(e) *Accessibility*

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Dis-

cernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.

(f) *Location*

Adequate housing must be in a location which allows access to employment options, health care services, schools, child care centres and other social facilities. This is both true in large cities and in rural areas where the temporal and financial costs of getting to and from places of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

(g) *Culturally adequate*

The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed and that they should ensure, *inter alia*, modern technological facilities, as appropriate.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom to choose one's residence and the right to participate in public decision-making is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recommended in the Global Shelter Strategy and in other international analyses, many of the measures required to promote the right to housing re-

quire only abstention by the Government from certain practices and a commitment to facilitate "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11.1, 22 and 23 of the Covenant, and that the Committee is informed thereof.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement in living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment No. 2, despite externally caused problems, the obligations found in the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations found in the Covenant.

12. While the most appropriate means for achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in the Global Shelter Strategy, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures" (para. 32). Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Further, steps should be taken to ensure coordination between ministries, regional and local authorities in order to reconcile related

policies (economics, agriculture, environment, energy and so forth) with the obligation arising from article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11.1 it must determine, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised reporting guidelines adopted by the Committee emphasize the need to "provide detailed information about those groups within society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures are considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of "enabling strategies", combined with a full commitment to obligations concerning the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Shelter Strategy (paras. 66-67) has drawn attention to the type of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases, the Committee is interested in learning of the legal and practical significance of such an approach. Details

of specific cases and of other ways in which entrenchment has proved useful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to:

(*a*) Legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions;

(*b*) Legal procedures seeking compensation following an illegal eviction;

(*c*) Complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance and racial or other forms of discrimination;

(*d*) Allegations of any form of discrimination in the allocation and availability of access to housing; and

(*e*) Complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems, it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

18. In this regard, the Committee considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law.

19. Finally, article 11.1 concludes with the obligation of States parties to "recognize the essential importance of international cooperation based on free consent". Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial portion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the

right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

ANNEX IV

Non-governmental organizations working for housing rights

Asian Coalition for Housing Rights (ACHR)
P.O. Box 24-74
Klongchan, Bangkapi
Thailand, Bangkok 10240
Tel: 66 2 5380919

Centre on Housing Rights and Evictions
havikstraat 38bis
3514 TR Utrecht
Netherlands
Tel: 31 30 731976

ENDA
rue Carnot 54
Dakar 3370
Senegal
Tel: 221 220942

Fedevivienda
Avda (Calle) 40, No. 15-69
AA 57059, Bogota
Colombia
Tel: 57 1 2880711

Habitat et Participation
1, place du Levant
1348 Louvain-la-Neuve
Belgium
Tel: 32 10 472314

Habitat International Coalition (HIC)
Cordobanes No. 24, Col. San José Insurgentes
Mexico D.F. 03900
Mexico
Tel: 52 5 6516807

National Campaign for Housing Rights (NCHR)
Flat No. 119, Bldg No. 8, 1st floor, Jasmine Mill Road
Mahim (East) Bombay 400 017
India
Tel: 91 22 4070623

Rooftops International
2 Berkely St., Suite 207
Toronto, M5A 2W3
Canada
Tel: 1 416 3661711

ANNEX V

Select bibliography and further reading

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Human Rights Fact Sheets:

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No. 2 *The International Bill of Human Rights*
No. 3 *Advisory Services and Technical Assistance in the Field of Human Rights*
No. 4 *Methods of Combating Torture*
No. 5 *Programme of Action for the Second Decade to Combat Racism and Racial Discrimination*
No. 6 *Enforced or Involuntary Disappearances* (Rev.1)
No. 7 *Communications Procedures*
No. 8 *World Public Information Campaign for Human Rights*
No. 9 *The Rights of Indigenous Peoples*
No. 10 *The Rights of the Child*
No. 11 *Summary or Arbitrary Executions*
No. 12 *The Committee on the Elimination of Racial Discrimination*
No. 13 *International Humanitarian Law and Human Rights*
No. 14 *Contemporary Forms of Slavery*
No. 15 *Civil and Political Rights: The Human Rights Committee*
No. 16 *The Committee on Economic, Social and Cultural Rights*
No. 17 *The Committee against Torture*
No. 18 *Minority Rights*
No. 19 *National Institutions for the Promotion and Protection of Human Rights*
No. 20 *Human Rights and Refugees*
No. 21 *The Human Right to Adequate Housing*

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